

REMARKS

The Office Action mailed December 10, 2008, has been received and reviewed. Claims 1-24 and 26-36 are currently pending in the application. Claims 1-21, 24 and 26-36 stand rejected. Applicant has amended claims 1, 20, 24, 26, 35 and 36, and respectfully requests reconsideration of the application as amended herein. No new matter has been added.

35 U.S.C. § 102 Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,590,873 to Li *et al.*

Claims 1, 2, 5-7, 10-12, 16-20, 24 and 26-36 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,590,873 to Li *et al.* ("Li"). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant submits that Li does not and cannot anticipate, under 35 U.S.C. § 102, the presently claimed invention of amended independent claim 1 with claims 2, 5-7, 10-12, 16-19 and 27-34 depending therefrom, and amended independent claims 20, 24, 26, 35 and 36, because Li does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims.

Generally, Applicant's invention as presently claimed recites first and second indications of signal quality of first and second transmissions comprising *portions of a plurality of power control bits where the quantity of power control bits* in the different portions *are distributed proportionally differently according to* different operational *modes*. Specifically, Applicant's invention as claimed recites:

"a first indication in a first power control group ... a second indication in a respectively adjacent second power control group ... wherein *quantities of the plurality of power control bits of the first and second portions are distributed proportionally*

differently across a frame according to different power control modes of the system", (Independent Claims 1, 24, 26, 35 and 36);
"first and second indications via a first and a respectively adjacent second power control groups ... wherein *quantities of the plurality of power control bits of the first and second portions are distributed proportionally differently across a frame according to different power control modes of the system*", (Amended Independent Claim 20).

In contrast, the Office Action alleges:

Li et al disclose ... [w]herein the first and second indications are respectively formed from first and second portions of a plurality of power control bits (Figure 4, second bit and fourth bit of power group 40) defined by the system for feedback for the plurality of transmissions (Column 3, lines 27-52), wherein the first and second portions are distributed proportionally differently according to different power control modes of the system. As shown in Figure 4, the supplemental PC bit and fundamental PC bit may also occupy the fourth and second bit positions, the first and third bit positions, the third and first bit positions, the first and second bit positions, or the third and fourth bit positions, respectively in the power control group 40. (Office Action, pp. 2-3; emphasis added).

Applicant clearly claims *different proportions* of power control bits *in the first portion and in the second portion based upon the different power control modes*. The Office Action cites to Li which merely discloses *reordering* the supplemental and fundamental PC bits and not different proportions as claimed by Applicant. In order to advance prosecution on the merits, Applicant has further amended independent claims 1, 20, 24, 26, 35 and 36 to specifically recite, *inter alia*, "quantities of the plurality of power control bits of the first and second portions are distributed proportionally differently across a frame according to different power control modes of the system."

Furthermore, the Office Action then continues by alleging Li teaches various claim elements but fails to provide support for such disclosure in Li. Specifically regarding the further alleged disclosure of Li, the Office Action states:

The placement of the supplements PC bit and fundamental PC bit affects the fading of the pilot channel, which affects the power control of the system. Power is increased to compensate for the fading. Therefore, the distribution of the power control sub-channels is done according to power control modes of the system. If the system is experiencing

extreme fading and needs power control, the power control sub-channels will separate the pilot sub-channels. Refer to Column 1, lines 12-17 and lines 54-62; and Column 3, line 53 to Column 4, line 14. (Office Action pp. 3-4; emphasis added).

Applicant respectfully notes that Li does not disclose “the distribution of the power control sub-channels is done according to power control modes of the system” as alleged, but merely discloses that “*separation of the pilot sub-channels with the power control sub-channels provides time diversity for better combating fading of the pilot channel.*” (Li, col. 3, lines 58-61; emphasis added). Clearly Li discloses an artifact, namely that *separation* of pilot channel combats fading, however, disclosure of the mere artifact of “separation” for “combating fading” does not disclose Applicant’s claim element of “*quantities of the plurality of power control bits ... distributed proportionally differently across a frame according to different power control modes of the system.*” Again, Li’s mere disclosure of “separation ... combating fading” does not disclose “different power control modes of the system” as claimed by Applicant. Therefore, Li does not disclose Applicant’s identical invention in as complete detail as is required for a proper anticipation rejection under 35 U.S.C. § 102. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Therefore, since Li does not disclose “*quantities of the plurality of power control bits of the first and second portions are distributed proportionally differently across a frame according to different power control modes of the system*” in as complete detail as claimed by Applicant, Li cannot anticipate under 35 U.S.C. §102 Applicant’s invention as claimed in amended independent claim 1 with claims 2, 5-7, 10-12, 16-19 and 27-34 depending therefrom, and amended independent claims 20, 24, 26, 35 and 36.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

35 U.S.C. § 103 Obviousness Rejections

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of U.S. Patent No. 6,233,439 to Jalali (“Jalali”).

The nonobviousness of amended independent claim 1 precludes a rejection of claim 3

which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claim 3 which depends therefrom.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of Jalali and in further view of U.S. Patent No. 6,259,927 to Butovitsch *et al.* (“Butowitsch”).

The nonobviousness of amended independent claim 1 precludes a rejection of claim 4 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claim 4 which depends therefrom.

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of U.S. Patent No. 6,148,208 to Love (“Love”).

The nonobviousness of amended independent claim 1 precludes a rejection of claim 8 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claim 8 which depends therefrom.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li. Applicant respectfully traverses this rejection, as hereinafter set forth.

The nonobviousness of amended independent claim 1 precludes a rejection of claim 9 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claim 9 which depends therefrom.

Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of U.S. Patent No. 6,539,008 to Ahn *et al.* ("Ahn").

The nonobviousness of amended independent claim 1 precludes a rejection of claims 13 and 15 which depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claims 13 and 15 which depend therefrom.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of Ahn and further in view of U.S. Patent No. 6,498,785 to Derryberry *et al.* ("Derryberry").

The nonobviousness of amended independent claim 1 precludes a rejection of claim 14 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 1 and claim 14 which depends therefrom.

Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Li in view of U.S. Patent No. 6,337,989 to Agin ("Agin").

The nonobviousness of amended independent claim 20 precludes a rejection of claim 21 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the rejection to amended independent claim 20 and claim 21 which depends therefrom.

Objections to Claims 22 and 23/Allowable Subject Matter

Claims 22 and 23 stand objected to as being dependent upon rejected base claims, but are indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Applicant acknowledges this indication with appreciation, but respectfully asserts that the claims in their present form, along with all other claims presently under consideration, are in condition for allowance.


CONCLUSION

Claims 1-24 and 26-36 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned agent.

Respectfully submitted,

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